

REMARKS

The issues outstanding in the Final Rejection of October 25, 2007, are newly made rejections under 35 U.S.C. 103. All prior rejections of record have been withdrawn, in favor of the newly cited references employed in the new rejections of the Final Rejection. Reconsideration of these issues, in view of the following discussion, is respectfully requested.

Rejection Under 35 U.S.C. 103 over Phillips et al. (U.S. Patent 6,569,529)

Claims 1-4, 6-10 and 13 have been rejected under 35 U.S.C. 103 over Phillips '529. Reconsideration of this rejection is respectfully requested.

It is argued, at page 2 of the Final Rejection, that Phillips teaches interference pigment flakes comprising a reflector layer in the middle (noting figures 1, 4, 5 and 8) and a dielectric layer which can have alternating layers of high and low index materials. The Office Action continues that Phillips discloses the reflector layer may be aluminum, titanium or other metals or alloys thereof, or mica or glass flakes. In fact, while it is understood how this conclusion has been arrived at in the Office Action, the belief that Phillips discloses a “reflector layer” which is mica or glass flakes is not entirely accurate.

Phillips does not disclose, in actuality, a interference pigment having a substrate which is, e.g., mica or glass flakes, and thereon a first layer of silica. Instead, patentees teach, for example at column 6, lines 40-52, that the “reflector layer” is metal, a metal alloy, or a combination thereof because of the high reflectivity and ease of use of such layers. As examples of metallic materials, patentees disclose aluminum, silver, copper, gold, platinum, tin, titanium, pilatium, nickel, cobalt, rodium, niobium, chromium and combinations thereof. Mica and glass flakes are not disclosed in this portion of the patent. It is not until column 11, lines 17-29, that mica is first mentioned. In conjunction with figure 4, patentees discuss an alternative coating structure, having a “thin core layer” which can be mica or glass flake or another silicate, and then – in order to provide the reflectivity required in the patent – patentees disclose that such core must be coated with a reflective metallic coating, “which can be composed of the same materials as described above” for their reflector layer. See, in particular, lines 22-25 of column 11. Thus, the

patent does not suggest a material which comprises a substrate of, e.g., mica or glass flakes and "a first layer" of silica thereon. Instead, the patent teaches only materials which have a first reflective metal layer thereon, and which may be subsequently coated by a dielectric. Otherwise, the essential reflectivity of the disclosed pigments of the patent would be lost. As a result, Phillips fails to suggest a non-metal substrate with a first layer of silica thereon. Withdrawal of this rejection is therefore respectfully requested.

The Office Action also makes two additional rejections, each employing Phillips as the primary reference with various secondary references, in order to provide a purported teaching of obviousness of claims 5 and 11, and 12. However, the deficiencies of Phillips are noted above, and the secondary references, cited for, e.g., the use of carbon black in various layers, and preparation processes including hydrolytic decomposition of metal salts, do not remedy the deficiencies of Phillips. Accordingly, these rejections also should be withdrawn, and the same is respectfully requested.

The claims of the application are submitted to be in condition for allowance. However, if the Examiner has any questions or comments, he or she is cordially invited to telephone the undersigned at the number below.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

/Harry B. Shubin/

Harry B. Shubin, Reg. No. 32,004
Attorney/Agent for Applicant(s)

MILLEN, WHITE, ZELANO
& BRANIGAN, P.C.
Arlington Courthouse Plaza 1, Suite 1400
2200 Clarendon Boulevard
Arlington, Virginia 22201
Telephone: (703) 243-6333
Facsimile: (703) 243-6410

Attorney Docket No.: MERCK-3037
Date: May 27, 2008